

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DR. PETER LAWRENCE,

Plaintiff,

v.

**NYACK HOSPITAL, EMERGENCY
MEDICAL ASSOCIATES, INC. and DAVID
FREED,**

Defendants.

CASE NO.: 07-Civ.-311 (JGK)

**STATEMENT OF
UNDISPUTED MATERIAL FACTS
PURSUANT TO L.Civ. 56.1**

Defendant Nyack Emergency Medical Associates, PLLC (incorrectly captioned as Emergency Medical Associates, Inc.) and referred to herein as “EMA” by way of Statement of Undisputed Material Facts pursuant to L.Civ. 56.1 states as follows:

1. Raymond Iannaccone, M.D. is the President of Nyack Emergency Medical Associates, PLLC (“EMA”) (incorrectly captioned as “Emergency Medical Associates”). (See, Affidavit of Raymond Iannaccone, M.D. (“Iannaccone Affidavit” ¶ 1))

2. EMA is in the business of operating and staffing emergency rooms with physicians and other personnel required to run them. In 2006, EMA entered into a contract with Nyack Hospital, for EMA to operate and staff the Hospital’s Emergency Room effective November 1, 2006. (See, Iannaccone Affidavit, ¶ 3)

3. At the time EMA and Nyack Hospital entered into that contract, another company, known as EMTEL, was operating the emergency room at Nyack Hospital. (See, Iannaccone Affidavit, ¶ 4)

4. Under EMA's contract with Nyack Hospital, EMA took over the operation of the Nyack Hospital Emergency Room from EMTEL as of November 1, 2006. (See, Iannaccone Affidavit, ¶ 5)

5. Oscar Marcilla, M.D. was the Director of Emergency Services for EMTEL and he assisted in the transition between EMTEL and EMA. He was ultimately hired by EMA as its Director of Emergency Services, as at the date EMA took over the Nyack hospital Emergency Room operation, on November 1, 2006. (See, Iannaccone Affidavit, ¶ 6)

6. Based on information and advice provided to Dr. Iannaccone by Oscar Marcilla, M.D., EMA decided to make offers of employment to a limited number of EMTEL physicians. Plaintiff, Peter Lawrence, M.D., was among the group of physicians that were under contract with EMTEL who would not be offered employment by EMA. (See, Iannaccone Affidavit, ¶ 7)

7. It apparently became known in the hospital that EMA was not going to offer employment to Peter Lawrence, M.D., and several other EMTEL doctors, including Stuart Rasch, M.D. and Claus Rymond, M.D. Dr. Iannaccone attended a staff meeting at Nyack Hospital, during the fall of 2006, during which various Nyack Hospital staff members voiced their displeasure at EMA's intent not to offer employment to Drs. Lawrence, Rasch and Rymond. EMA subsequently decided that it would offer, to these three EMTEL doctors, contracts with an initial term of ninety (90) days (with the possibility that the contracts could be renewed if the relationship, during the initial 90 day period, was mutually satisfactory.) (See, Iannaccone Affidavit, ¶ 8)

8. On October 25, 2006, proposed contracts for full time employment with EMA were sent to Stuart Rasch, M.D. (See, Iannaccone Affidavit, ¶ 9, Exhibit "A" thereto); Peter

Lawrence, M.D. (See, Iannaccone Affidavit, ¶ 9, Exhibit “B” thereto); and Claus Rymond, M.D. (See, Iannaccone Affidavit, ¶ 9, Exhibit “C” thereto).

9. Dr. Rasch returned his contract to EMA with certain changes which, although, limited in nature, were unacceptable to EMA and, accordingly, Dr. Iannaccone wrote to Dr. Rasch on behalf of EMA, advising that the changes were unacceptable. (See, Iannaccone Affidavit ¶ 10, Exhibits “D” and “E” thereto.)

10. Dr. Peter Lawrence returned his proposed contract with far more extensive changes than made by Dr. Rasch. (See, Iannaccone Affidavit, ¶11, Exhibit “F” thereto). As he did in the case of Dr. Rasch, Dr. Iannaccone wrote to Dr. Lawrence on behalf of EMA, advising that the changes were unacceptable. (See, Iannaccone Affidavit, ¶ 11, Exhibit “G” thereto) Dr. Iannaccone received no communications from Dr. Lawrence in response to his letter. (See, Iannaccone Affidavit, ¶ 11)

11. Dr. Claus Rymond did not execute the contract offered to him but, rather, came to work for EMA on a “per diem” basis. He ultimately executed a contract with EMA, on or about May 7, 2007 (See, Iannaccone Affidavit, ¶ 12, Exhibit “H” thereto)

12. Dr. Rymond’s contract was renewed several times and he continued to work for EMA until he resigned in the fall of 2010. (See, Iannaccone Affidavit, ¶ 13)

Additional Facts Relevant To Motion To Dismiss For Lack Of Subject Matter Jurisdiction

13. On or about July 25, 2005 Peter Lawrence, M.D., filed with the U.S. Equal Employment Opportunity Commission, New York Office (“EEOC”), a Charge of Employment Discrimination against his former employer, Respondent EMTEL and its former director of Emergency Services, Ira Mehlman, M.D. (The EEOC’s Confirmation of Receipt together with the Charge of Discrimination and Notice of Charge of Discrimination, as well as correspondence from Dr. Lawrence to the EEOC dated July 28, 2005, clarifying that the named Respondent

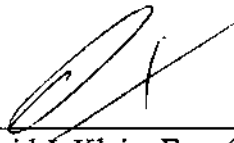
should be "EMTEL/Nyack Principals Group" are annexed, collectively, as Exhibit "A" to the Affidavit of David J. Klein, Esq.)

14. A true copy of the Complaint filed in the United States District Court, Southern District of New York, in the matter "Dr. Peter Lawrence, M.D. v. EMTEL Nyack Principals Group, Dr. Ira Mehlman, as aider and abetter" CIV 2580, is annexed to the Affidavit of David J. Klein, Esq. as Exhibit "B").

15. A true copy of the Amended Complaint filed by Plaintiff Peter Lawrence, M.D. in the instant matter is annexed to the Affidavit of David J. Klein, Esq., as Exhibit "C").

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Dated: March 9, 2011

By: 
David J. Klein, Esq. (DJK 9675)